IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.330 & 537 of 2004

Sivaraj .. Petitioner in both the revisions/PW1

Vs.

1.Vellaichamy @ Venkidusamy

2.The State represented by
The Sub-Inspector of Police,
Madathukulam Police Station,
Udumalpet Taluk,
Coimbatore District,
in Cr.No.216 of 2002 .. Respondents in both the revisions/Complainant

Prayer:- These revisions have been preferred against the judgment dated 10.11.2003 made in C.C.No.222 of 2002 on the file of the Judicial Magistrate No.II, Udumalpet.

For Petitioner :Mr.N.E.A.Denesh (in both the above Revisions)

For Respondents :Mr.M.N.Balakrishnan (for R1)
(Legal Aid Counsel)

Mr.V.R.Balasubramanian (for R2)
Additional Public Prosecutor
(in both the above Revisions)

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COMMON JUDGMENT

These revisions have been preferred against the judgment in C.C.No.222 of 2002 on the file of the Judicial Magistrate No.II, Udumalpet.

2.The short facts of the case of the prosecution is that on 15.10.2002 at about 9.00 pm the accused had waylaid the lorry bearing registration No.TDY-9983, which was driven by the driver

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Marimuthu (P.W.3) by parking his jeep bearing registration No.TN.55-4444 in the midst of the road thereby wrongfully restraining P.W.3 Marimuthu from proceeding further in his lorry and also criminally intimidated P.W.3, with a Koduval and when P.W.3 informed about the occurrence to P.W.1, his employer, P.W.1 rushed to the place of occurrence and asked whether the accused had restrained his driver, thereupon the accused has assaulted P.W.1 with an aruval causing injury on his right middle finger. Hence, the accused has been charged under Section 341, 352, 326 and 506(ii) IPC.

3.The case was taken on file by the learned Judicial Magistrate and on appearance of the accused, on summons, copies under Section 207 of Cr.P.C., were furnished to the accused and charges were framed under Section 341, 352, 326 and 506(ii) IPC and when questioned, the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.15 were examined and Ex.P.1 to Ex.P.7 were exhibited and M.O.1 to M.O.4 were marked.

4.P.W.1 in his evidence would depose that on 15.10.2002 at about 9.00 pm his lorry driver Marimuthu (P.W.3) came and informed him that while he was proceeding in his lorry the accused had wrongfully restrained him near Paraimedu by parking his jeep bearing registration No.TN.55-4444 across the road and also criminally intimidated him with an aruval. Immediately along with Karupasamy (P.W.2) went to the place of occurrence and saw the jeep belonging to the accused was parked across the road and when enquired about the complaint made by P.W.3, the accused took up an aruval and attempted to cut him which was resisted by him with his right hand and during the assault he received a cut injury in the right middle finger. He has identified M.O.1 as the aruval used by the accused in assaulting him. He would further depose that on seeing the villagers rushing towards him the accused left the aruval in the place of occurrence itself and took to his heels and while he was returning to his house a person by name Thangavel came in a two wheeler helped him to go to government hospital Udumalpet, wherein he was given first aid and then referred to the government hospital at Coimbatore. M.O.2 is the blood stained shirt and M.O.3 is the blood stained dothi recovered by the police from P.W.1 after the occurrence. P.W.1 has preferred Ex.P.1-complaint.

5.P.W.2 - Karupasamy is the brother of P.W.1. According to him, on 15.10.2002 he followed the lorry bearing registration No.TDY-9983 to his village on the eve of Ayuthapuja and that the accused had parked his jeep bearing registration No.TN.55-4444 in the midst of the road obstructing the lorry from proceeding further and that the accused had made an attempt to assault the lorry driver, immediately he along with the lorry drive went and informed P.W.1, who also accompanied them to the place of

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occurrence and when he enquired about the incident, the accused had assaulted P.W.1 with an aruval on the right middle finger causing grievous injury. He has identified M.O.1 as the aruval used by the accused at the time of the occurrence.

6.P.W.3 is the driver of the lorry bearing registration No.TDY-9983, who has also corroborated the evidence of P.W.1 & P.W.2. P.W.4 is also an eye witness to the occurrence. P.W.5 is not an ocular witness, but only a circumstantial witness. P.W.6 is also an eye witness to the occurrence. P.W.7 has seen the injured after the occurrence in the place of occurrence. P.W.8 is also not an occurrence witness. P.W.9 is a witness in the recovery mahazar Ex.P.2 for the recovery of M.O.3-dothi from the injured P.W.1. P.W.10 is a witness in the observation mahazar-Ex.P.3. He is also a witness in Ex.P.4-recovery mahazar for M.O.1.

7.P.W.14 is the Head Constable, who had registered the case under Cr.No.216 of 2002 on the basis of the complaint preferred by P.W.1 under Ex.P.1. He had visited the place of occurrence and prepared observation mahazar in the presence of P.W.9 & P.W.10 and had drawn Ex.P.7-rough sketch in the presence of the same witnesses.

8. P.W.15 is the Investigating Officer, who had taken up further investigation and examined the witnesses and recorded their statements.

9.P.W.11 has deposed that only in his presence M.O.1-weapon was recovered. P.W.12 is the doctor, who had examined P.W.1 for the injury he had sustained. Ex.P.5 is the copy of the accident register. She has noticed a fracture in the right middle finger of P.W.1 to an extent of 0.3 x 0.2 x 0.2 cms.

10.P.W.13 is a radiologist in CMC hospital, Coimbator. M.O.4 is the x-ray taken to P.W.1 for the fracture he had sustained in the right middle finger. The doctor has deposed that proximal bone in the right middle finger of P.W.1 was found fractured.

11.After following the formalities P.W.15 has completed the investigation and filed the charge sheet against the accused.

12.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. After going through the evidence both oral and documentary, the learned trial judge has come to the conclusion that the accused is not guilty under Section 341, 352 & 506(ii) IPC and under Section 326 IPC, but convicted the accused under Section 335 IPC and sentenced him to undergo one week RI and a fine of Rs.2,000/- with default sentence. Aggrieved by the findings of the learned trial judge P.W.1 has preferred

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Crl.R.C.No.330 of 2004 challenging the order of acquittal by the learned trial judge under Section 341, 352 & 506(ii) against the accused and also preferred Crl.R.C.No.537 of 2004 for enhancement of the punishment imposed on the accused under Section 335 IPC.

13.Now the points for determination in this case are

(i) Whether the order of acquittal by the learned trial judge of the accused under Section 341, 352 & 506(ii) IPC can be sustainable?

(ii) Whether the conviction and sentence of the learned trial judge under Section 335 IPC is liable to be enhanced?

14.The Points:- 14(a) P.W.3-Marimuthu is the driver of the lorry bearing registration No.TDY-9983. According to him, the accused had parked his jeep bearing registration No.TN.55-4444 in the midst of the road near paraimedu, thereby wrongfully restrained him from proceeding further. The evidence of P.W.1 is to the effect that on seeing the jeep of the accused and after the assault made by the accused he took the lorry in reverse and went away from the place of occurrence. This part of the evidence has been corroborated by P.W.4. Under such circumstances, it cannot be said that the accused had wrongfully restrained P.W.1. There is absolutely no evidence on record to show that only on sudden provocation the accused had assaulted P.W.1. So as rightly observed by the learned trial judge that an offence under Section 352 cannot be attracted against the accused will also sustain. P.W.1 in his evidence has nowhere stated that the accused at the time of occurrence criminally intimidated him in a way to endanger his life. On that score only the learned trial judge has acquitted the accused from the charge under Section 506(ii) IPC. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial judge that the offence under Section 341, 352 & 506(ii) have not been made out against the accused. So the revision petitioner in Crl.R.C.No.330 of 2004 is not entitled to any relief in the revision.

14(b) When coming to Criminal Revision No.537 of 2004 for enhancement of punishment under Section 335 IPC, on the basis of the evidence of P.W.1 to the effect that he was assaulted by the accused with M.O.1-aruval causing grievous injury in the right middle finger, which was also corroborated by the medical evidence of the doctor P.W.13, who had given an opinion on the basis of M.O.4 X-ray as to the grievous injury sustained by P.W.1 in the right middle finger, and P.W.12 doctor, who had examined P.W.1 and issued Ex.P.5-copy of the accident register described the nature of the injury sustained by P.W.1 on the right middle finger as greivous one due to the fracture of the proximal bone in the right middle finger of P.W.1, the learned trial judge has

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convicted the accused under Section 335 IPC, which cannot be sustainable in lieu of the evidence of P.W.1 and the evidence of doctors P.W.13 & P.W.12. It is the specific evidence of P.W.1 that he was assaulted with M.O.1 aruval by the accused at the time of the occurrence, which evidence has been corroborated by medical evidence of P.W.13 & P.W.12 as to the injury P.W.1 has sustained is grievous injury in the right middle finger. Under such circumstances, an offence under Section 326 IPC alone is attracted and not an offence under Section 335IPC. At this juncture, the learned Legal Aid Counsel Mr. M.N.Balakrishnan would represent that the accused is aged nearly 60 years and as per the judgment of the trial Court he has served out a weeks RI. Under such circumstances, I am of the view that instead of sending the accused once again to the prison the fine alone imposed by the learned trial judge can be enhanced from Rs.2000- to Rs.10,000/-. Points are answered accordingly.

15.In fine, Crl.R.C.No.330 of 2004 is dismissed. Crl.R.C.No.537 of 2004 is allowed and the conviction passed by the learned trial judge under Section 335 IPC is modified to that of 326 IPC and while confirming the sentence of one week RI, the fine imposed by the learned trial judge is enhanced from Rs.2,000/- to Rs.10,000/- in default to undergo 4 months RI. The fine amount of Rs.10,000/- is ordered to be paid as compensation to the victim P.W.1 under Section 357(1) of Cr.P.C.

ssv

Sd/
Asst.Registrar

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Sub Asst.Registrar

To,

1.The Judicial Magistrate No.II,
Udumalpet.

2-do-The Chief Judicial Magistrate,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

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4.The Sub-Inspector of Police,
Madathukulam Police Station,
Udumalpet Taluk,
Coimbatore District,
in Cr.No.216 of 2002

+ one cc to Mr. V. Nicholas, Advocate sr no. 42426
+ one cc to Mr. M.M. Balakrishnan, Advocate sr no. 42531

rs(co)
nm(20.07.07)

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